

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

February 4, 2000

Re: 00-0107

Carrie J. Hightman
Jonathan P. Friedland
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606

Theresa P. Larkin
Illinois Bell Telephone Company
555 E. Cook St., Fl. 1E
Springfield, IL 62721

William Haas
McLeodUSA
Telecommunications Services, Inc.
6400 C St., SW.
PO Box 3177
Cedar Rapids, IA 52406-3177

Christian F. Binnig
J. Tyson Covey
Mayer, Brown & Platt
190 South LaSalle St.
Chicago, IL 60603-3441

Mark Kerber
AMERITECH ILLINOIS
225 W. Randolph St.
Chicago, IL 60601

Dear Sir/Madam:

Enclosed is a copy of the Memorandum from the Hearing Examiner to the Commission regarding recommended action at the Special Open Meeting on February 4, 2000. The Order presented to the Commission was entered with no changes and therefore, is not enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Donna M. Caton".
Donna M. Caton
Chief Clerk

DMC:jbm
Enclosure

Docket No.: 00-0107
S.O.M. Date: 02-04-00
Deadline: 02-04-00

MEMORANDUM

TO: The Commission

FROM: John D. Albers, Hearing Examiner

DATE: February 2, 2000

SUBJECT: McLeodUSA Telecommunications Services, Inc.
-vs-
Illinois Bell Telephone Company (Ameritech Illinois)

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ILLINOIS COMMERCE COMMISSION
CHIEF CLERK'S OFFICE

Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois under Sections 13-514 and 13-515 of the Public Utilities Act concerning imposition of special construction charges and seeking emergency relief pursuant to Section 13-515(e).

RECOMMENDATION: Deny the request for emergency relief; stay the proceeding pending the outcome of Docket No. 99-0593; and remind Ameritech of its obligation to meet deadlines.

On Monday, January 31, 2000, McLeodUSA Telecommunications Services, Inc. ("McLeod") filed a Complaint against Illinois Bell Telephone Company (Ameritech Illinois) ("Ameritech"), pursuant to Sections 13-514 and 13-515 of the Public Utilities Act ("Act"), concerning the imposition of special construction charges associated with the provision of unbundled network elements. I understand that each Commissioner has received a copy of the Complaint. McLeod also sought emergency relief under Section 13-515(e) of the Act. The attached Hearing Examiner's Decision concerns the request for emergency relief.

McLeod's Complaint raises issues similar to those found in Docket No. 99-0525. McLeod was one of two complainants that filed the complaint in Docket No. 99-0525, but was later dismissed from the proceeding without prejudice. Because the second complainant, Ovation Communications, Inc. d/b/a McLeodUSA ("Ovation"), prevailed on certain issues in that docket and because McLeod believes that it has substantially the same case as Ovation, McLeod now seeks emergency relief in the form of that which Ovation received from the Commission in the final Order in Docket No. 99-0525.

Pursuant to Section 766.110(b) of 83 Ill. Adm. Code Part 766, Ameritech was accorded until noon on February 1, 2000 to respond to McLeod's request for emergency relief. Three hours after the expiration of this deadline, Ameritech submitted a response in opposition to the request for emergency relief. A copy of that response is attached to this memorandum.

The attached Hearing Examiner's Decision denies the request for emergency relief on the grounds that McLeod has not at this time shown a likelihood that it will succeed on the merits. Although the issues and arguments appear similar to those upon which Ovation prevailed, it is uncertain just how similar (or different) a new special construction policy employed Ameritech is to its old policy, which was the basis of the complaint in Docket No. 99-0525.

Under Section 13-515(e), a hearing examiner has two business days following the filing of a complaint requesting emergency relief to issue a decision granting or denying such relief. The decision of the hearing examiner shall be considered an order of the Commission unless the Commission enters its own order within two calendar days of the decision of the hearing examiner. Accordingly, the Commission has until Friday, February 4, 2000 to act on this Hearing Examiner's Decision.

In addition, McLeod indicates in its Complaint that it is willing to stay this proceeding, except with respect to its request for emergency relief, until a final order is issued in Docket No. 99-0593. Ameritech states in its response to McLeod's request for emergency relief that it has no objection to staying this case pending the outcome of Docket No. 99-0593, as McLeod suggests. Docket No. 99-0593 concerns the Commission initiated investigation into Ameritech's special construction charge policy. A Hearing Examiner's Proposed Order should be issued in early May, 2000 in that docket. Section 13-515 of the Act establishes the sixty day deadline for cases filed under Section 13-514, as the present Complaint has been. Under Section 13-515(a), however, the Commission, complainant, and respondent may mutually agree to adjust the procedures set forth in Section 13-515. In light of McLeod's and Ameritech's concurrence that this proceeding should be stayed pending the outcome of Docket No. 99-0593, the Commission should also agree to stay this proceeding. The Commission should discuss this matter at its February 4, 2000 Special Open Meeting.

Finally, I ask that the Commission note the untimeliness of Ameritech's response to McLeod's request for emergency relief. Under the Commission's rules, Ameritech's response should have been filed by 12:00 PM, Tuesday, February 1. Not until 3:00 PM that afternoon did I finally receive Ameritech's response via electronic mail. Ameritech's counsel did not in any way contact me ahead of time to inform me that he would be filing late. At approximately 1:00 PM on Wednesday, February 2, I received from Ameritech a Motion for Leave to File Instantly its response to McLeod's request for emergency relief. Although the Complaint was filed with the Commission at 10:00 AM on January 31, counsel for Ameritech claims that he did not receive the Complaint until after 3:00 PM on the 31st. Whether his late receipt of the Complaint was due to internal

delays within Ameritech is uncertain, Counsel for Ameritech also states that numerous factual allegations had to be investigated as well. In the event that its response is deemed untimely, Ameritech seeks to file it instantler. Ameritech believes that it should be allowed to do so since no party was prejudiced by the delay because the Commission's rules do not provide for an opportunity to reply to its response.

Ameritech apparently neglects to consider, however, that the rules require its response by noon the day after a complaint is filed so that the hearing examiner has sufficient time to prepare a decision and meet his or her statutory deadline. The fact that no party had an opportunity to reply to its response is irrelevant. Decreasing the amount of time that a hearing examiner has to prepare a decision negatively impacts the work of the Commission. Although parties are sometimes given leeway in meeting deadlines imposed by a hearing examiner in non-expedited cases, the deadlines imposed by rule and statute in such expedited proceedings as this one should not be treated so casually. Obviously I did not disregard Ameritech's response in this situation, although I believe it would have been appropriate to do so. Rather, I merely ask that the Commission remind Ameritech of its responsibility to observe deadlines in future proceedings.

JDA